



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Environmental & Land Case 537 of 2009

WILLIAM THITAI NGATIA.....PLAINTIFF/APPLICANT

VERSUS

REV. JOSHUA KATUA T/A JESUS VICTORY

EXPLOSION CENTRE....DEFENDANT/RESPONDENT

RULING

The Application

1. By his application dated 22/10/2009, the Plaintiff herein, William Thitai Ngatia is praying for injunctive orders against the Defendant in respect of Plot No. A – 11-2 Umoja Innercore (the suit premises) until this suit is heard and determined. The application is premised on grounds that the Defendant has on more than one occasion incited his church or hired goons to stop the construction works on the suit premises alleging that he (Defendant) is the owner of the suit premises. The Plaintiff also says that he is the lawful purchaser of the suit premises from the original owner and has been cleared by the relevant/allocating authority, namely the City Council of Nairobi and been issued with all the necessary documents including the assignment of lease thereof.
2. The application is also premised on the affidavit dated 22/10/2009 sworn by the Plaintiff. To the affidavit, the Plaintiff has annexed agreement of Sale between the Plaintiff and one Andrew Mwangi Chui dated 24/04/2009. The Plaintiff has also annexed a Power of Attorney donated by Andrew Mwangi Chui to the Plaintiff. The Power of Attorney is dated 24/04/2009. The Plaintiff has also exhibited certain payment receipts variously in the names of Jenifer Wanjiru and A.N. Chui all made in respect of the suit premises. By a letter dated 8/5/2009 addressed to the Plaintiff, the City Council of Nairobi confirmed that the rates outstanding against the suit premises had been paid in full, with the last payment having been received by the Council on 20/04/2009 vide receipt No. 104516 marked as annexure "WTN2". There is also another assignment between the City Council of Nairobi and Jeniffer Wanjiru through her attorney, the Plaintiff and also Andrew Mwangi Chui through his attorney William Thitai Ngatia. The Assignment was issued subject to the assignee performing and observing all the conditions, averments stipulations and other requirements of the Agreement for Sale dated 6/06/2009. On the basis of the above, the Plaintiff prays for the injunctive orders sought.

3. Together with the chamber summons application the Plaintiff filed a plaint dated 21/10/2009. The Plaintiff avers that he is a purchaser of the suit premises from one Andrew Mwangi Chui (original owner) of the suit premises, that he commenced development of the suit premises on or about 27/04/2009, but that the Plaintiff's efforts were thwarted by the Defendant who claimed to have title documents to the suit premises. The Plaintiff further avers that the Defendant has failed to prove his ownership of the suit premises and accordingly the Plaintiff prays for judgment against the Defendant FOR:-
- (a) *An injunction to restrain the Defendant his servants or agents or members of his church restraining them (sic) from interfering, encroaching, alienating, stopping construction or in any way interfering with the Plaintiff's peaceful and quiet enjoyment of the suit premises PLOT NO. 1-11-2 UMOJA INNERCORE or development thereof whatsoever pending the hearing and determination of this suit.*
 - (b) *General damages*
 - (c) *Costs of this suit*
 - (d) *Interest on (b) and (c) at court's rates.*
4. The Plaintiff's application is opposed. The Defendant, Rev. Joshua Katua swore the Replying Affidavit on 29/10/2009. The Defendant's contention is that he, together with one Raphael Mugenge Kahi purchased the suit premises otherwise known as LR No. NAIROBI/BLOCK 83/14/78 measuring about 0.0269 of a hectare from the registered proprietor Simon Wachira per the Sale Agreement marked "JKN 1" to the Replying Affidavit. The Defendant says that in or about April 2008, he completed the transaction whereupon the transferor, Simon Wachira released the following documents to the Defendant:-
- (i) *Transfer forms with consent to transfer from City Council of Nairobi.*
 - (ii) *Original title to the suit property*
 - (iii) *Original Rates Clearance Certificate*
 - (iv) *Rates Demand Note from City Council of Nairobi.*
5. The Defendant says that they have been paying ground rent to the City Council of Nairobi including the amount payable in 2009; and further that the process of transferring the suit premises into the Defendant's name is now under way.

The Submissions

6. The application proceeded by way of written submissions. In their submissions, counsel for the Plaintiff submitted that the Defendant has not placed any evidence before this court to show the nexus between the suit premises and LR No. Nairobi/Block 83/4/78 which the Defendant alleges to have bought from one Simon Wachira. The Plaintiff's counsel also submitted that the Defendant is a liar since, in HCC ELC No. 536 of 2009 (now withdrawn) the Defendant had admitted that they had received an enforcement notice from the City Council of Nairobi to pull down a fence which they (Defendant) had erected around the suit premises. Counsel for the Plaintiff also points out that the Defendant has conceded that the church has built a structure on an adjacent plot which is NOT A SUBJECT OF THIS SUIT. The Plaintiff wants the court to note that the Defendant has completely failed to produce ownership documents of the suit premises as demanded of him by the City Council of Nairobi. The Plaintiff has asked the court to find that on the facts before the court, the Plaintiff has established a prima facie case with a probability of success and to grant the orders sought with costs to the Plaintiff.
7. In their submissions dated 20/11/2009 the Defendant's counsel contended that the Defendant bought the suit premises known as NAIROBI/BLOCK 83/14/75 from one Simon Wachira and that since the title by Simon Wachira is a first registration, the said title is indefeasible. Counsel for the Defendant relied on Section 27 of the Registered Land Act to buttress this argument of indefeasibility of title and also cited a number of authorities all of which authorities have been considered by the court. Counsel for the Defendant further submitted that the court should find that the Certificate of Title from Simon Wachira is prima facie evidence of title. On the basis of the above arguments, counsel for the Defendant urged the court to find and to hold that Sections 27, 28 and 32(1) of the RLA tilt this case in favour of the Defendant and to further find that sanctity of the Defendants title is guaranteed under the provisions of Section 143 of the RLA.

Issues and Findings

8. The court has now considered the application, the plaint, the defence and the submissions made. The court has also considered the

law. The issue that arises for determination is whether the Plaintiff has satisfied the conditions for the granting of injunctions as set out in the case of **Giella –vs- Cassman Brown & Co. Ltd. [1973] EA 358**. The determination of this question also hinges on whether or not the suit premises are LR No. NAIROBI/BLOCK 83/14/78 or PLOT NO. A-11-2 UMOJA INNERCORE.

9. After considering all the above, I find that each party is laying claim to a different parcel of land. I also find that the Defendant has conceded that he has put up some structures on a piece of land other than the one which he claims to have bought from one Simon Wachira. It is also conceded by the Defendant that he does not have title documents to the suit premises known as PLOT NO. A-11-2 UMOJA INNERCORE. These facts dictate that the suit premises should be protected until this matter is heard and fully determined through viva voce evidence.
10. I note that though the Plaintiff did not obtain an ex parte injunction when he first appeared in court on the 23/10/2009 the parties did agree on the 29/10/2009, to maintain the status quo until the Plaintiffs application was heard and determined. In light of the above, I allow the Plaintiff's chamber summons application dated 22/10/2009 and filed in court on the same day in terms of prayer (2) thereof, that is to say that the Defendant, his servants, or agents or members of his church be and is hereby restrained from interfering, encroaching, alienating, stopping construction or in any way interfering with the Plaintiff's peaceful and quiet enjoyment of the suit premises known as PLOT NO. A-11-2-UMOJA INNERCORE or development thereof whatsoever until this suit is heard and determined. The Applicant shall also have the costs of this application.

Orders accordingly.

Dated and delivered at Nairobi this 16th day of February, 2010.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Mr. Nduati (present) for the Plaintiff/Applicant

Mr. Midikira (present) For the Defendant/Respondent

Weche – court clerk